

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA**

In re:

MERCY HOSPITAL, IOWA CITY, IOWA, *et al.*,

Debtors.

)
) Chapter 11
)
) Case No. 23-00623 (TJC)
)
) Jointly Administered
)
) **Related to Docket No. 1224**

**DECLARATION OF DR. THOMAS CLANCY IN SUPPORT OF FINAL FEE
APPLICATION OF MCDERMOTT WILL & EMERY LLP, COUNSEL TO THE
DEBTORS AND DEBTORS-IN-POSSESSION, FOR ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF EXPENSES**

I, Dr. Thomas Clancy, being duly sworn, state the following under penalty of perjury and that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the former Chief Executive Officer and Chairman of the Board of Directors (the “Board”) of Mercy Hospital, Iowa City, Iowa (“Mercy”) and its debtor affiliates (collectively, the “Debtors”). I hereby submit this declaration (this “Declaration”) in support of the *Eleventh Monthly and Final Fee Application of McDermott Will & Emery LLP, Counsel to the Debtors and Debtors-in-Possession, for Allowance of Compensation and Reimbursement of Expenses* [Docket No. 1224] (the “MWE Fee Application”). Unless otherwise stated, the facts set forth in this Declaration are based upon my personal knowledge and my experience in my capacity as an officer and director of the Debtors during the above-captioned chapter 11 cases (the “Chapter 11 Cases”). If called to testify, I could and would testify competently to the facts set forth in this Declaration.

2. From November 1, 2017 to June 24, 2024, I served as a member of the Board. In the fall of 2022, as part of its evaluation of various strategic alternatives and contingency planning scenarios, the Board selected and retained McDermott Will & Emery LLP (“McDermott”) as Mercy’s restructuring counsel. This decision was based in large part on McDermott’s significant

experience and expertise in complex healthcare restructurings, including large chapter 11 cases involving the sale or divestiture of hospitals. It was compelling to the Board that McDermott is the only law firm in the U.S. that is ranked as a “Band 1” healthcare law firm by Chambers, a rating McDermott has exclusively received for 20 straights years.¹ In my opinion, McDermott’s knowledge and experience in both of these fields proved invaluable to the Board and to the Debtors prior to and during the Chapter 11 Cases.

3. On or around April 3, 2023, I was appointed as Chief Executive Officer (“CEO”) of the Debtors and Chairman of the Board. Throughout the spring and summer of 2023, the Board met regularly with representatives from McDermott in their capacity as restructuring counsel to Mercy to discuss contingency planning options. I also met frequently with McDermott in my capacity as CEO to discuss various operational and logistical aspects of implementing certain of the proposed strategic paths. These discussions intensified in the summer of 2023 when tensions flared between Mercy and the Bondholder Representatives, which forecast to me and to the Board that the potential closure of Mercy Hospital was a real possibility, an unfortunate reality that the Board took very seriously.

4. McDermott navigated the Board through these troubled waters, with Board meetings on almost a weekly basis and further discussions with me in my capacity as CEO, to ensure that the Board received comprehensive legal advice regarding all of their available alternatives. This effort accelerated with the filing of a receivership action against Mercy by the Bondholder Representatives in July 2023, which necessitated preparation for an emergency bankruptcy filing and immediate re-engagement with the State of Iowa’s University of Iowa (the “University”) as Mercy’s stalking horse bidder. On August 6, 2023, following numerous

¹ See Chambers and Partners, Healthcare in Illinois, USA Guide 2024, McDermott Will & Emery, available at <https://chambers.com/departments/mcdermott-will-emery-llp-healthcare-usa-5:62:12471:1:4384>.

discussions with McDermott, the Board, of which I was Chairman, authorized, among other things, the retention of McDermott and Nyemaster Goode, P.C. as general bankruptcy co-counsel to the Debtors and the filing of chapter 11 petitions for each of the Debtors. On August 7, 2023, pursuant to the foregoing Board authorization, the Debtors, with the assistance of McDermott and Nyemaster, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Iowa (the “Court”). In my opinion, accomplishing these efforts in a mere two-week timeframe was a monumental effort amongst not only McDermott, but also Nyemaster as local counsel, and ToneyKorf Partners, LLC as interim management.

5. The Chapter 11 Cases proved equally contentious and as such, I, along with the Board, met regularly during the Chapter 11 Cases with McDermott attorneys regarding the status of various negotiations with the University, the Bondholder Representatives, the Official Committee of Unsecured Creditors (the “Committee”), and the Official Committee of Pensioners. At each stage of the proceedings, McDermott kept the Board fully apprised, which allowed the Board to continue to make critical decisions that were in the best interests of the Debtors, the estates, and creditors. The Committee’s focus was on the use of funds held by Mercy Hospital Foundation and given the intricate and delicate issues, McDermott’s non-profit lawyers provided invaluable assistance during that time. In addition, McDermott led the auction and sale process as well as the negotiations, drafting, and litigating the proposed chapter 11 plan of liquidation, which required McDermott to provide, among others, corporate advice, antitrust advice, regulatory advice, pension counsel, litigation advice, and other key practice areas of focus necessary for a comprehensive restructuring.

6. With respect to the auction and sale process, McDermott kept the Board apprised with respect to the competing bids from the University and the Bondholder Representatives. I

participated in person at the first of three auctions and witnessed the intense negotiations between the University and Bondholder Representatives. Given the operating losses experienced by Mercy Hospital at the time, the Board believed that it was important for the winning bid to include payment of operating losses from December 1, 2023 through the sale closing date. Following the second auction and the Debtors' determination that the Bondholder Representatives' bid was the highest and best bid, the Board subsequently expressed concern about the ability for the Bondholder Representatives to close the sale transaction and locate a new operator capable of stepping into to effectively operate Mercy Hospital, given that the Bondholder Representatives, unlike the University, were not equipped to operate Mercy Hospital themselves. Given these concerns as well as a material disagreement with respect to the Bondholder Representatives' bid and payment of go-forward operating losses, the Board supported reengaging once more with the University and reopening the auction to the extent necessary. In my opinion, McDermott's efforts to reengage with the University and bring them back to the table in connection with the sale process was critical to obtaining the increased consideration in the University's winning bid, which included \$28 million cash, a commitment to fund Mercy Hospital's operating losses from December 1, 2023 through sale closing, and a commitment to invest up to \$25 million at Mercy Hospital itself to the benefit of its patients and the surrounding community.

7. In my opinion, McDermott's expertise, knowledge, and experience in both complex restructurings and healthcare were critical to the Debtors' success in these Chapter 11 Cases. *First*, I believe that the McDermott restructuring and healthcare teams, among others, were instrumental in negotiating, documenting, and consummating the Debtors' sale of substantially all of their assets to the University to the benefit of all patients and local Iowa residents served by Mercy Hospital, as well as Mercy's employees. *Second*, I believe that the unsecured creditor recoveries provided

for in the Debtors' confirmed chapter 11 plan, particularly those allotted for the benefit of Mercy's pensioners, would not have been possible without the efforts of McDermott. *Finally*, it is my opinion that, without McDermott's assistance prior to and during the Chapter 11 Cases, Mercy Hospital would have been either forced into receivership or closed, to the detriment of its patients, local Iowa residents, and the surrounding community. As such, I believe that the outcome of the Chapter 11 Cases, as well as the care and safety of patients at Mercy Hospital, may have been significantly jeopardized, but for McDermott's efforts prior to and during the Chapter 11 Cases.

8. Importantly, during the Chapter 11 Cases, the Board's Finance Committee reviewed and approved the Mercy Hospital's budget report (which included both McDermott and other consultant fees) each month and recommended to the Board that each of them be approved. Following such recommendation, I, in my capacity as Chairman of the Board, also reviewed and subsequently approved McDermott's invoices and fee applications, which were subsequently (and unanimously) approved by the Board. Accordingly, I believe that the fees and expenses requested by McDermott in the MWE Fee Application are not only reasonable but more than justified, given the skill, expertise, and professionalism exhibited by McDermott during the Chapter 11 Cases and the incredible results achieved by McDermott for the benefit of the Debtors and their estates, creditors, and patients.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 21, 2024

/s/ Dr. Thomas Clancy

Dr. Thomas Clancy, PhD

Former Chief Executive Officer and Chairman
of the Board

Mercy Hospital, Iowa City, Iowa